THE HON'BLE Ms. JUSTICE G.ROHINI

WRIT PETITION NO.1555 OF 2006

DATED: 18-06-2007

Between :

M/s. Model Financial Corporation Limited,
Model House, Punjagutta, Hyderabad, rep.
By its Director Sri VSRP Adusumilli. … Petitioner

And

M/s. A.P.Industrial Development Corporation Limited,
Parisrama Bhavan, Basheer Bagh, Hyderabad,
Rep. By its Vice-Chairman & Managing Director …. Respondent

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O R D E R:

The petitioner, which is a public limited company, filed C.A.No.182 of 2002 under Section 391 of the Companies Act, 1956 for consideration of a scheme of arrangement. Pursuant to the order passed by this Court, appointing a Chairman, a meeting was conducted and a report was submitted stating that majority of the shareholders agreed to approve the scheme of arrangement. Thereafter, the petitioner company filed Company Petition No.83 of 2002 with a prayer that the scheme of arrangement as approved by the shareholders of the petitioner company be sanctioned and confirmed. Pending the said C.P.No.83 of 2002, the petitioner moved an application being C.A.No.531 of 2002 under Section 391(6) of the Companies Act, 1956 seeking to stay the commencement or continuation of any suit or proceedings against the petitioner company. This Court by an order dated 11th July, 2002 directed that pending consideration of the scheme of arrangement, all the proceedings including filing of any civil suits shall be stayed, however, such proceedings could be initiated with the prior approval of this Court. Ultimately, C.P.No.83 of 2002 was dismissed by order dated 25.06.2003 on the ground that the existing scheme of arrangement could not be sanctioned till the petitioner company obtains necessary permission from the State Government in view of the express bar contained under Section 12 of the Chit Funds Act, 1982. Questioning the said order, the petitioner company filed O.S.A.No.69 of 2003,

which was allowed by a Division Bench of this Court by judgment dated 30.01.2006, thereby remitting the matter back to the Company Court for disposal afresh taking into consideration the fact that the Chit Funds Act, 1982 does not apply to the State of Andhra Pradesh. Pursuant thereto, C.P.No.83 of 2002 has been taken on file and the same is still pending before the Company Court.

It is to be noted that much prior to the initiation of proceedings for sanction of the scheme under Section 391 of the Companies Act, the petitioner company availed certain financial benefits from the respondent-Corporation by depositing the title deeds in respect of the immovable properties belonging to the petitioner company as collateral security. Alleging that substantial amounts are due from the petitioner company the respondent-Corporation initiated action under section 29 of the State Financial Corporations Act, 1951 and the office of the petitioner company was seized on 21.01.2006 ignoring the request of the petitioner to accept repayment of loan in phased manner.

Hence, the present writ petition seeking a declaration that the action of the respondent-Corporation in affecting seizure of the registered office of the petitioner company as arbitrary, illegal and contrary to the provisions of the Companies Act, 1956 as well as the orders of this Court passed in Company Petition and for a consequential direction to restore the possession of the seized premises to the petitioner.

It is contended by the petitioner that the impugned action of the respondent Corporation would not only frustrate the implementation of the scheme of arrangement submitted to this Court in C.P.No.83 of 2002 under Section 391 of the Companies Act but would also result in winding up of the petitioner company adversely affecting the interest of various shareholders.

In response to Rule Nisi ordered by this Court, a counter-affidavit has been filed on behalf of the respondent-Corporation stating that the petitioner company is a chronic defaulter and as on 31.01.2006, a sum of Rs.1,10,16,150/- is outstanding against the loan account of the petitioner, and therefore, the action under Section 29 of the State Financial Corporation Act, 1951 has been rightly initiated following due process of law. It is stated that as a matter of fact the proceedings were initiated in the year 2001 itself, but the same were discontinued in view of the stay granted by the Company Court. However, since the Company Petition was subsequently dismissed, the proceedings under Section 29 of State Finance Corporation Act were continued and the impugned seizure was effected on 21.01.2006.

I have heard the learned Counsel for both the parties and perused the material on record.

It is relevant to note that though by the date of the impugned seizure and by the date of filing of this writ petition, C.P.No.83 of 2002 was dismissed, subsequently, during the pendency of this writ petition, O.S.A.No.69 of 2003 filed by the petitioner was allowed by a Division Bench by Judgment dated 30-01-2006 and C.P.No.83 of 2002 has been restored to file and the same is pending as on today before the Company Court.

It is also relevant to note that pending OSA No.69 of 2003, an interim order dated 26.09.2003 was passed granting status-quo existing as on that date with regard to filing of any civil suits or proceedings against the petitioner company and the same was in operation till the Appeal was allowed. However, it appears that while remanding C.P.No.83 of 2002 to the Company Court for fresh hearing there was no specific direction by the Division Bench with regard to continuation of interim stay of filing of civil suits and other proceedings

against the petitioner company.

In the circumstances, the learned Counsel for the petitioner submits that it is necessary in the interest of justice to issue a Mandamus declaring the impugned seizure by the respondent Corporation as arbitrary and illegal and direct restoration of the possession of the seized premises to the petitioner.

I am unable to agree with the said submission of the learned Counsel for the petitioner since admittedly C.P.No.83 of 2002 which is filed for approval of the scheme of arrangement is pending as on today. Since the subject-matter of this writ petition is seized by the Company Court, the petitioner cannot be allowed to seek any relief under Article 226 of the Constitution of India which would amount to pursuing two parallel remedies at the same time.

As held by the Supreme Court in HARISH C.RASKAPOOR vs. JAFERBHAI MOHMEDBHAI CHHATPAR[1] the Company Court has the powers to grant appropriate interim orders pending disposal of the scheme of arrangement or compromise under Section 391 of the Companies Act, 1956. Hence, it is always open to the petitioner to move an appropriate application before the Company Court for necessary directions against the respondent Corporation with regard to the impugned action.

The decision of the Supreme Court in RAJASTHAN STATE FINANCIAL CORPN. v. OFFICIAL LIQUIDATOR[2] cited by the learned Counsel for the petitioner is distinguishable on facts and has no application to the case on hand.

Accordingly, granting leave and liberty to the petitioner to work out the appropriate remedy as available under law, the Writ Petition is disposed of. No costs.

G. ROHINI, J.

Dt. 18 –06-2007
gbs

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[1] 1989 Vol.65 Company Cases 193

[2] (2005)8 Supreme Court Cases 190